

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SIDNEY HAWKINS,

00 CV 1343 (SJ)

Petitioner,

**MEMORANDUM
AND ORDER**

-against-

JOSEPH COSTELLO, Superintendent, Mid-
State Correctional Facility,

Respondent.
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A P P E A R A N C E S:

RICHARD ELLIOT KWASNIK, ESQ.
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Attorney for Petitioner

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District Attorney
Kings County
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By: Phyllis Ruth Mintz, Esq.
Karen Marcus, Esq.
Attorneys for Respondent

JOHNSON, Senior District Judge:

On April 15, 2005, this Court granted, in part, Sidney Hawkins' ("Hawkins")
petition for a writ of habeas corpus and ordered his immediate release. Pursuant to 28
U.S.C. § 2254, Hawkins had sought reversal of his conviction of criminal possession

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of a weapon in the third degree (N.Y. Penal Law § 265.02(4)).¹ On April 27, 2005, Respondent filed a Notice of Appeal of this Court's order with the United States Court of Appeals for the Second Circuit (the "Second Circuit"). On May 3, 2005, Respondent moved to stay execution of the Judgment as well as for an interim stay pending this Court's ruling on the stay motion. While the Court granted the interim stay, after considering the parties' filings on the stay pending appeal request, the Court denied the request for a stay pending appeal, lifted the interim stay and ordered Hawkins to be released within 15 days from the date that order was entered. Respondent immediately sought a stay pending appeal from the Second Circuit, which granted the stay. In a decision dated August 9, 2006, the Second Circuit reversed this Court's grant, in part, of the petition and remanded with instructions for the Court to dismiss the petition.

Therefore, pursuant to the written directive from the Second Circuit, Hawkins' petition for a writ of habeas corpus is hereby DISMISSED. The Clerk of the Court is directed to close the case.

SO ORDERED.

DATED: August 10, 2006
Brooklyn, NY

s/SJ

Senior U.S.D.J.

¹For a more detailed history of the proceedings in this matter, the Court refers both to the Report and Recommendation of Magistrate Judge A. Simon Chrein dated January 7, 2003, as well as to this Court's Memorandum and Order dated April 15, 2005.